Humphrey v. *Wade*, 84 Ky. 391. Where the money has been paid into the hands of the clerk the purchaser cannot recover it. *Dunn* v. *Frazier*, 8 Blackf. 432; *Whitmore* v. *Parks* 22 Tenn. 95. If the money is merely paid to the officer, it has been held it can be recovered. *Bartholomew* v. *Warner*, 32 Conn.98; *Bragg* v. *Thompson*, 19 S. C. 572. Where a stranger to the proceedings has paid money at an execution sale for property not belonging to the defendant in the execution, he may recover this amount in an action against the judgment debtor, as money paid to his use. *Preston* v. *Harrison*, 9 Ind. 1; *McLean* v. *Martin*, 45 Mo. 393. And it is generally held that where an execution sale is set aside, the satisfaction may be set aside and a new execution awarded on *scire facias*. *Magwire* v. *Marks*, 28 Mo. 193; *Adams* v. *Smith* 5 Cow. 280; *Cross* v. *Zane*, 47 Cal. 602. No case like the present is cited by the court in its opinion, and none has been found, though the case of *Sanders* v .*Hamilton*, 3 Dana (Ky.) 550 resembles it in some respects. Perhaps if the doctrine of warranty of title in execution sales of chattels had been established in the beginning it would have been a better rule. The effect of such a rule would undoubtedly be to increase the price paid for goods sold on executions, by placing the duty of ascertaining and warranting the title on the real seller, the execution creditor. And it would seem that since the creditor would be in no worse position if the title proved defective than if no sale were made, such a rule would not impair the usefulness of such sales to the execution creditor. At present the rule that there is no warranty of title in execution sales of chattels is clearly established. .*England* v. *Clark*, 5 Ill. 486; *Salmon* v. *Price*, 13 Ohio 368, 42 Am. Dec. 204:*The Monte Allegre*, 9 Wheat 616; *Lewark* v. *Carter*, 117 Ind 206. On the other side of the question there are reasons other than precedent for refusing to allow a recovery in a suit against the execution creditor, for as Mr. Freeman aptly says, "Such an action is necessarily founded upon a mistake of law. The purchaser is sure to base his claim upon the fact that he mistook the legal effect of the proceedings in the case, or of the defendant's muniments of title. And it is a well known fact that a mistake of law is ordinarily not a sufficient foundation for relief at law nor in equity. FREEMAN EXECUTIONS, Ed. 3, § 352.

HUSBAND AND WIFE—TENANCY BY THE ENTIRETY—EXECUTION.—Plaintiffs, husband and wife, were owners as tenants by the entirety of a parcel of land when a joint judgment was taken against them. Execution issued and levy was made upon the estate. After the usual formalities a deed to the land was made to defendants. Plaintiffs in this action asked that their title to the estate as tenants by the entirety be quieted and that defendants be ejected from the land. *Held*, that the estate by the entirety was liable on a joint execution against the plaintiffs. *Sharp et al* v. *Baker* (Ind. App. 1911) 96 N. E. 627.

The Indiana court is here confronted with an argument by plaintiffs' counsel that the estate by the entirety is one created for the use and benefit of the husband and wife during coverture and intended to be preserved as a sort of a homestead. There is discoverable no report of a previous decision of the point. Consequently this court reaches its decision by means of an ex-

haustive review of the principles governing estates by the entirety. Referring to the common law status of such an estate as a species of joint tenancy, hence having the four unities; viz, of interest, title, time and possession, BLACKSTONE'S COM. *180 *183, the court points out that joint tenants held equal shares for the purpose of immediate alienation but, for the purposes of possession and survivorship, each owned the whole. 1 PRESTON ESTATES *136; *Wilkins* v. *Young,* 144 Ind. 1, 41 N. E. 68, 55 Am. St. Rep. 162. At common law husband and wife were regarded as one. BLACKSTONE'S COM. *182. This notion gave rise to the construction of an entirety of estate in their tenancy. 1 PRESTON, ON ESTATES *32. Each was seized of the whole and neither of a divisible part. 1 BLACKSTONE'S COM. *182. As a result, a tenant by entirety could not defeat the right of the survivor to hold the entire estate. At common law the husband had, during the coverture, a right to possess and control the wife's portion of such estate. *Beach* v. *Hollister,* 3 Hun 519; *Hall* v. *Stephens,* 65 Mo. 670, 27 Am. Rep. 302; *Davis* v. *Clark,* 26 Ind. 424, 89 Am. Dec. 471. This right to rents could be sold on execution for his debts. *Ames* v *Norman,* 4 Sneed 683, 70 Am. Dec. 269; *Bennett* v. *Child,* 19 Wis. 362 88 Am. Dec. 692; *Snyder* v. *Sponable,* 1 Hill (N. Y.) 567. After the passage of modern statutes, however, the profits of the State became her separate property as fully as if she were unmarried. BURNS ANN ST., 1908 § 7852. Consequently the husband does not own the rents of the property held in entirety with his wife and they cannot be sold for his debts. *Chandler* v. *Cheney,* 37 Ind. 391; *Jones* v. *Chandler,* 40 Ind. 588; *Patton* v. *Rankin,* 68 Ind. 245, 34 Am. St. Rep. 254. From the further facts which the court points out, that the estate by entirety with its incidents is preserved under the statutes as at common law (BURN'S ANN. ST., § 3954), and that a husband and wife are undisputably entitled jointly to sell such an estate, it concludes that plaintiffs' argument is not sound and that defendants have good title through the joint judgment.

INJUNCTION—DAMAGES—ATTORNEY'S FEES. Five temporary injunctions were adjudged to have been wrongfully sued out and were ordered dissolved in *C. H. Albers Commission Co. et al.* v. *Spencer et. al,* 205 Mo. 105, 103 S. W. 523. When this mandate went down to the lower court defendants there moved for assessment of damages on the injunction bonds, including in their motion a request for allowance of attorney's fees incurred both (1) in seeking to dissolve the injunctions in the lower court, and (2) in defending appeals from the lower court's order of dissolution. *Held,* as to (1) attorney's fees were properly assessed as part of the damage flowing naturally and proximately from the wrongful injunctions, but that as to (2) attorney's fees for defending appeals were too remote and would not be allowed. *C. H. Albers Commission Co, et. al.* v. *Spencer et. al.* (Mo. 1911) 139 S. W. 321.

The rule that attorney's fees incurred in getting rid of a wrongful injunction are properly included as part of the damage sustained by the injured party is in accord with that followed generally. *Porter* v. *Hopkins,* 63 Cal. 53; *Keith* v. *Henkleman,* 173 Ill. 137; *Swan* v. *Timmons,* 81 Ind. 243; *Nielson* v. *Albert Lea,* 87 Minn. 285. But some courts hold that the defendant is